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## BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

MAY -5 2009

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF  
SUN LEISURE ESTATES UTILITIES COMPANY,  
INC., FOR A CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO PROVIDE WATER  
SERVICE IN YUMA COUNTY, ARIZONA.

DOCKET NO. W-02386A-08-0189

DECISION NO. 70981OPINION AND ORDER

DATE OF HEARING:

February 24, 2009

PLACE OF HEARING:

Tucson, Arizona

ADMINISTRATIVE LAW JUDGE:

Belinda A. Martin

APPEARANCES:

Jason Y. Moyes, Noble Law Offices, on behalf of Sun  
Leisure Estates Utilities Company, Inc.; andKevin Torrey, Staff Attorney, Legal Division, on behalf  
of the Utilities Division of the Arizona Corporation  
Commission.**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the  
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT****Procedural History**

1. In Decision No. 52398 (August 21, 1981), the Commission granted Sun Leisure  
Estates Utilities Company, Inc. ("Sun Leisure" or "Company") a Certificate of Convenience and  
Necessity ("CC&N") to provide water service in an unincorporated portion of Yuma County near the  
City of Yuma, Arizona.

2. On March 5, 2008, Sun Leisure filed with the Commission an application requesting  
an emergency surcharge of approximately \$450 per customer in order to drill a new well and install a

1 new pump to back up and secure the water supply ("Emergency Surcharge Application").<sup>1</sup>

2 3. While investigating the Emergency Surcharge Application, the Commission's Utilities  
3 Division Staff ("Staff") discovered that the Commission had revoked the Company's CC&N pursuant  
4 Decision No. 69179 (December 5, 2006), after Sun Leisure's corporate status had been revoked by  
5 the Commission's Corporations Division for failure to file Annual Reports.

6 4. On April 8, 2008, Sun Leisure filed the instant application for a CC&N  
7 ("Application").

8 5. On June 13, 2008, in Decision No. 70375, the Commission denied Sun Leisure's  
9 Emergency Surcharge Application, finding that an emergency did not exist. The Commission ordered  
10 the Company to file within 30 days of the effective date of the Decision evidence of the Company's  
11 active corporate status. Sun Leisure was also ordered to file an application for a permanent rate  
12 increase within 120 days of the effective date of the Decision.<sup>2</sup>

13 6. On May 8, May 12, and August 8, 2008, Staff issued Letters of Insufficiency and Data  
14 Requests to the Company.

15 7. On December 4, 2008, Staff notified the Company that its Application was sufficient  
16 pursuant to the Arizona Administrative Code ("A.A.C.").

17 8. On December 11, 2008, a Procedural Order was issued setting a hearing in this matter  
18 for February 24, 2009, and establishing deadlines.

19 9. On February 3, 2009, pursuant to the Procedural Order, the Company filed  
20 correspondence noting that it had published and mailed notice of the hearing and posted the notice at  
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22  
23  
24 <sup>1</sup> The basis for the Company's Emergency Rate Application was that one of the Company's two wells failed, leaving the  
25 community with just one operating well. Sun Leisure became concerned when seismic activity occurred in the area; the  
26 Company was fearful that an earthquake could cause the remaining well to fail. At hearing on the instant matter, the  
Company testified that, to date, there have been no production issues with the remaining well. (Transcript, at 11.)

27 <sup>2</sup> The requirement that the Company file for a permanent rate increase within 120 days of the effective date of the  
28 Decision was modified by Decision No. 70692 (January 20, 2009). The Company's rate application must be filed by July  
31, 2009.

1 the community clubhouse.

2 10. On February 3, 2009, Staff filed its Staff Report in this matter, recommending  
3 approval of the Application subject to certain conditions.

4 11. On February 24, 2009, a hearing was held at the Commission's Tucson offices before  
5 a duly authorized Administrative Law Judge. No members of the public appeared to provide  
6 comment.

7 **Corporate Status**

8  
9 12. Sun Leisure is an Arizona non-profit corporation owned and operated by the members  
10 of the Sun Leisure Estates Homeowners Association ("HOA"), also an Arizona non-profit  
11 corporation, comprised of lot owners in the Sun Leisure Estates Subdivision. The Company's Board  
12 of Directors' terms are staggered and directors are elected each year from homeowners in the HOA.  
13 Although the Company's structure does not change, ownership of the Company changes each time a  
14 homeowner sells their property to another individual.

15  
16 13. In the Staff Report, Staff noted that, in response to its inquiry about Sun Leisure's past  
17 non-compliance issues resulting in the revocation of its CC&N, the Company explained that up until  
18 2002, it employed Roger Thompson as its CPA. Mr. Thompson handled association fees and  
19 expenses, Company billings and expenses, and he also served as Sun Leisure's statutory agent. When  
20 Mr. Thompson passed away in 2002, Sun Leisure retained a property management company, Crites  
21 and Associates, to assist the Company's Board in handling Sun Leisure's finances.

22  
23 14. According to the Staff Report, Diana Crites of Crites and Associates asserted that both  
24 the Company and the management company were unaware of the filing delinquencies from the  
25 Corporations and Utilities Divisions because all of the correspondence and forms sent by the  
26 Commission were mailed to the deceased statutory agent.

27 15. Staff notes that once the matter was brought to Ms. Crites' attention, she submitted the  
28

1 delinquent annual reports, signed by the current Board members since past Board members no longer  
2 lived in the area.

3 16. Staff states that, according to Ms. Crites, the forms were rejected by the Corporations  
4 Division since the reports contained signatures of the current Board members, rather than those of  
5 past Board members on file with the Commission. Ms. Crites told Staff that there was a proceeding  
6 that resulted in a ruling that the forms could be signed by the current Board President. The forms  
7 were resubmitted and accepted by the Commission.  
8

9 17. On July 10, 2008, pursuant to Decision No. 70375, Sun Leisure filed Certificate of  
10 Good Standing dated June 2, 2008, from the Commission's Corporation Division, indicating the  
11 Company's active corporate status.

12 18. In Staff's opinion, Sun Leisure did not intentionally fail to comply with Commission  
13 rules, regulations and reporting requirements, and concludes that the Company and the current  
14 property management company fully understand what is required by the Commission.  
15

16 19. Therefore, Staff does not believe it is necessary to impose any fines on Sun Leisure for  
17 past compliance failures.

18 **CC&N Application**

19 20. The Company provides service to approximately 57 metered customers in the 55-and-  
20 over retirement community.

21 21. Sun Leisure's water system consists of one well producing 130 gallons per minute,  
22 one 15,000 gallon storage tank, two booster pumps and a distribution system. According to Staff, the  
23 system has adequate capacity to serve its existing customers.  
24

25 22. The legal description of Sun Leisure's proposed service area is set forth in Exhibit A  
26 attached to this Decision.

27 23. According to the Company, Sun Leisure Estates is fully built-out and cannot expand  
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1 because of the military air base to the north of the property.<sup>3</sup> All the lots comprising the CC&N area  
2 are developed and/or sold and there is no remaining property upon which parks, fountains or other  
3 high water use features could be built.<sup>4</sup>

4 24. The Company's current rates were set in Decision No. 57078 (September 19, 1990).  
5 Information filed with Staff by the Company indicates that Sun Leisure is able to pay all of its bills  
6 with approximately 22 percent of the income going toward reserves for repairs and other  
7 miscellaneous expenses.

8 25. Sun Leisure is current on its property taxes.

9 26. Based on compliance information provided by the Company, the Arizona Department  
10 of Environmental Quality has determined that Sun Leisure's water system is delivering water that  
11 meets water quality standards required by A.A.C., Title 18, and Chapter 4.

12 27. Sun Leisure is not located in an Active Management Area ("AMA") and is not subject  
13 to any AMA reporting and conservation requirements. Arizona Department of Water Resources  
14 ("ADWR") reported to Staff that ADWR determined that Sun Leisure is currently in compliance with  
15 departmental requirements governing water providers and/or community water systems.

16 28. Sun Leisure filed for approval of a curtailment plan tariff and cross connection tariff  
17 on January 27, 2009.

18 29. Staff notes that Sun Leisure received a franchise agreement from the Yuma County  
19 Board of Supervisors when it was initially certified by the Commission to operate a water system as a  
20 non-profit corporation.

21 30. According to Staff, the Utilities Division Compliance Section reported that the  
22 Company has no delinquent compliance items.

23 31. Staff recommends that the Commission grant Sun Leisure's application for a CC&N  
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28 <sup>3</sup> Transcript, at 11-12.

<sup>4</sup> Transcript, at 16.

1 to provide water services, subject to the following additional conditions:

- 2 a. That the Commission require Sun Leisure to charge its existing rates and charges  
3 in the Company's certificated area;
- 4 b. That the Commission require Sun Leisure to use the depreciation rates by  
5 individual NARUC category, as set forth in Table A of the Engineering Report,  
6 attached to the Staff Report as Exhibit 2;
- 7 c. That the Commission require Sun Leisure to order any new entity that may be  
8 retained to replace the current property management company/statutory agent to  
9 become familiar with all Commission rules and regulations and to make certain the  
10 appropriate paperwork is filed with the Corporations Division and Utilities  
11 Division to change management and contact information.

12 32. Because an allowance for the property tax expense is included in Sun Leisure's rates  
13 and will be collected from its customers, the Commission seeks assurances from the Company that  
14 any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has  
15 come to the Commission's attention that a number of water companies have been unwilling or unable  
16 to fulfill their obligation to pay the taxes that were collected from its ratepayers, some for as many as  
17 twenty years. It is reasonable, therefore, that as a preventive measure Sun Leisure shall annually file,  
18 as part of its annual report, an affidavit with the Commission's Utilities Division attesting that the  
19 company is current in paying its property taxes in Arizona.

20 33. Staff's recommendations, as well as Finding of Fact No. 32, are reasonable and should  
21 be adopted.

### 22 CONCLUSIONS OF LAW

23 1. Sun Leisure is a public service corporation within the meaning of Article XV of the  
24 Arizona Constitution and A.R.S. §§40-281 and 40-282.

25 2. The Commission has jurisdiction over Sun Leisure and the subject matter of the  
26 Application.

27 3. Notice of the Application was provided in accordance with Arizona law.

28 4. There is a public need and necessity for water service in the proposed service area as  
set forth in the attached Exhibit A.

5. Sun Leisure is a fit and proper entity to receive a Certificate to provide water service  
in the proposed service area as set forth in the attached Exhibit A.

6. Staff's recommendations, as set forth herein, as well as Finding of Fact No. 32, are reasonable and should be adopted.

**ORDER**

IT IS THEREFORE ORDERED that the application of Sun Leisure Estates Utilities Company, Inc., for a Certificate of Convenience and Necessity to provide water service to the area in Yuma County, Arizona, as described in the attached Exhibit A, is approved subject to the conditions, recommendations and requirements stated below.

IT IS FURTHER ORDERED that Sun Leisure Estates Utilities Company, Inc., shall charge its existing rates and charges.

IT IS FURTHER ORDERED that Sun Leisure Estates Utilities Company, Inc., shall utilized the depreciation rates by individual NARUC category as delineated in Table A of Staff's Engineering Report attached to the Staff Report as Exhibit 2.

IT IS FURTHER ORDERED that if Sun Leisure Estates Utilities Company, Inc., retains a new property management company and/or a new statutory agent, Sun Leisure Estates Utilities Company, Inc., shall file with Docket Control and with the Commission's Corporations Division, an informational filing regarding the change in property management companies and/or statutory agent. Sun Leisure Estates Utilities Company, Inc. shall ensure that the new property management company and/or statutory agent are familiar with Commission rules and regulations and that all necessary and appropriate documentation shall be timely filed with the Commission.

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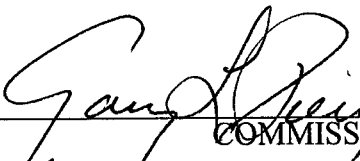


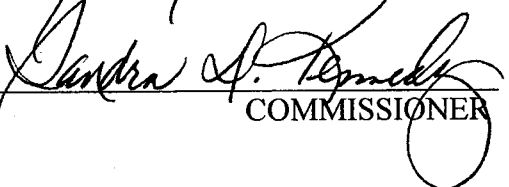
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IT IS FURTHER ORDERED that Sun Leisure Estates Utilities Company, Inc., shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that it is current on paying its property taxes in Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

	
CHAIRMAN	COMMISSIONER
	
COMMISSIONER	COMMISSIONER
	
	COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 5TH day of MAY, 2009.

  
MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_



1 SERVICE LIST FOR: SUN LEISURE ESTATES UTILITIES COMPANY, INC.

2 DOCKET NO.: W-02386A-08-0189

3  
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SUN LEISURE ESTATES UTILITIES COMPANY, INC.  
DOCKET NO. W-02386A-08-0189  
AMENDED LEGAL DESCRIPTION

**EXHIBIT "A"**

Parcel No. 1

The West half of the Northeast Quarter (W1/2 NE1/4 of Section 28, Township 9 South, Range 23 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona,

EXCEPT that portion of the West half of the West half of the Northeast Quarter of Section 28, described as follows:

BEGINNING at the Northwest corner of the West half of the West half of the Northeast Quarter, thence South 936 feet to a point, thence East 660.40 feet to a point, thence North 936 feet to a point, thence West 659.45 feet to the point of beginning.

AND FURTHER EXCEPTING a portion of the West half of the West half of the Northeast Quarter of Section 28, described as follows:

BEGINNING at the Southwest corner of the Northeast Quarter of said Section 28, thence North 535.85 feet, thence East 625.44 feet, thence South 533.54 feet, thence West 625.98 feet to the point of beginning.

Parcel No. 2

Lots 1 through 58, and Tract "A" Sun Leisure Estates, Unit No. 1, according to Book 8 of Plats, pages 64 and 65, Records of Yuma County, Arizona, further described as follows:

BEGINNING at the Northeast corner of the West half of the West half of the Northeast Quarter of Section 28, Township 9 South, Range 23 West;

THENCE South 00° 06' 49" East, a distance of 50.00 feet to the true Point of Beginning;

THENCE North 89° 47' 18" West, a distance of 62.90 feet;

THENCE South 00° 06' 49" East, a distance of 105.00 feet;

THENCE North 89° 47' 18" West, a distance of 368.72 feet;

THENCE South 41° 14' 45" West, a distance of 6.82 feet;

THENCE South 41° 14' 45" West, a distance of 46.21 feet;

THENCE North 89° 47' 18" West, a distance of 192.84 feet;

THENCE South 00° 03' 18" East, a distance of 741.00 feet;

THENCE South 89° 47' 18" East, a distance of 660.40 feet;

THENCE North 00° 06' 49" West, a distance of 886.02 feet to the true Point of Beginning.

Sun Leisure Estates Utilities Company

**EXHIBIT "2"**

Table A. Water Depreciation Rates

NARUC Account No.	Depreciable Plant	Average Service Life (Years)	Annual Accrual Rate (%)
304	Structures & Improvements	30	3.33
305	Collecting & Impounding Reservoirs	40	2.50
306	Lake, River, Canal Intakes	40	2.50
307	Wells & Springs	30	3.33
308	Infiltration Galleries	15	6.67
309	Raw Water Supply Mains	50	2.00
310	Power Generation Equipment	20	5.00
311	Pumping Equipment	8	12.5
320	Water Treatment Equipment		
320.1	Water Treatment Plants	30	3.33
320.2	Solution Chemical Feeders	5	20.0
330	Distribution Reservoirs & Standpipes		
330.1	Storage Tanks	45	2.22
330.2	Pressure Tanks	20	5.00
331	Transmission & Distribution Mains	50	2.00
333	Services	30	3.33
334	Meters	12	8.33
335	Hydrants	50	2.00
336	Backflow Prevention Devices	15	6.67
339	Other Plant & Misc Equipment	15	6.67
340	Office Furniture & Equipment	15	6.67
340.1	Computers & Software	5	20.00
341	Transportation Equipment	5	20.00
342	Stores Equipment	25	4.00
343	Tools, Shop & Garage Equipment	20	5.00
344	Laboratory Equipment	10	10.00
345	Power Operated Equipment	20	5.00
346	Communication Equipment	10	10.00
347	Miscellaneous Equipment	10	10.00

DECISION NO. 70981